U. S. DEPARTMENT OF LABOR

# Employees' Compensation Appeals Board

In the Matter of ALBERT J. ACRI and U.S. POSTAL SERVICE,
POST OFFICE, Harrisburg, Pa.

*Docket No. 97-2113; Submitted on the Record;*
*Issued June 9, 1999*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether appellant established that he sustained an emotional condition in the performance of duty.

The Board has given careful consideration to the issue involved, the contentions of appellant on appeal and the entire case record. The Board finds that the September 12, 1996 decision of the hearing representative of the Office of Workers' Compensation Programs is in accordance with the facts and the law in this case and therefore adopts the findings and conclusions of the hearing representative.

On December 12, 1996 appellant requested reconsideration on the grounds that the hearing representative erred in finding that appellant's stress/emotional injuries were unrelated to his employment and in failing to conclude that the employing establishment acted improperly. On March 17, 1997 the Office denied appellant's request on the grounds that the evidence and arguments submitted in support of reconsideration were insufficient to warrant modification of its prior decision.

The Board finds that appellant has failed to meet his burden of proof in establishing that his emotional condition was caused by factors of employment.

Under the Federal Employees' Compensation Act,[1] appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that the condition for which he claims compensation was caused or adversely affected by factors of his federal employment. To establish that he sustained an emotional condition in the performance of duty, appellant must submit: (1) factual evidence identifying employment factors or incidents alleged to have caused or contributed to her condition; (2) medical evidence establishing that he has an

[1] 5 U.S.C. §§ 8101-8193 (1974).

emotional or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to his emotional condition.[2]

Workers' compensation law does not cover each and every injury or illness that is somehow related to employment.[3] There are distinctions regarding the type of work situation giving rise to an emotional condition which will be covered under the Act.

For example, disability resulting from an employee's emotional reaction to his or her regular or specially assigned duties or to a requirement imposed by the employing establishment is covered.[4] However, an employee's emotional reaction to an administrative or personnel matter is generally not covered,[5] and disabling conditions caused by an employee's fear of termination or frustration from lack of promotion are not compensable. In such cases, the employee's feelings are self-generated in that they are not related to assigned duties.[6]

Nonetheless, if the evidence demonstrates that the employing establishment erred or acted abusively or unreasonably in the administration of a personnel matter, any physical or emotional condition arising in reaction to such error or abuse may be covered.[7] However, a claimant must support his allegations with probative and reliable evidence; personal perceptions alone are insufficient to establish an employment-related emotional condition.[8]

The initial question is whether appellant has established compensable employment factors as contributing to his condition.[9] Thus, part of appellant's burden of proof includes the submission of a detailed description of the specific employment factors or incidents which appellant believes caused or adversely affected the condition for which he claims compensation.[10] If appellant's allegations are not supported by probative and reliable evidence, it is unnecessary to address the medical evidence.[11]

In this case, appellant has alleged no work factors that caused the major depressive adjustment disorder diagnosed by Dr. Richard L. Sleber, a licensed clinical psychologist, and by Dr. Lawrence L. Altaker, a Board-certified psychiatrist, who treated appellant in March through

---

[2] *Vaile F. Walders*, 46 ECAB 822, 825 (1995).

[3] *Lillian Cutler*, 28 ECAB 125, 129 (1976).

[4] *Jose L. Gonzalez-Garced*, 46 ECAB 559, 563 (1995).

[5] *Sharon J. McIntosh*, 47 ECAB 754, 756 (1996).

[6] *Barbara E. Hamm*, 45 ECAB 843, 850 (1994).

[7] *Margreate Lublin*, 44 ECAB 945, 956 (1993).

[8] *Ruthie M. Evans*, 41 ECAB 416, 425 (1990).

[9] *Wanda G. Bailey*, 45 ECAB 835, 838 (1994).

[10] *Jimmy Gilbreath*, 44 ECAB 555, 558 (1993).

[11] *Margaret S. Krzycki*, 43 ECAB 496, 502 (1992).

June 1994. Dr. Altaker stated that appellant was hospitalized on March 12, 1994 "after having destroyed much of the contents of his house in a rage which he attributed in part to sulfites in alcohol and his frustration with his situation at work, difficulty with supervisors, and the progress of a lawsuit against" the federal government. He provided no specific work factors and added that appellant planned to return to work on July 11, 1994.

Similarly, Dr. Sleber, who had treated appellant since January 30, 1992, indicated in a July 5, 1994 report that appellant could return to work on July 11, 1994. Later, he stated in an October 18, 1994 report that appellant's emotional condition was caused by his response to the pain and disability resulting from his October 1990 work injury, and was aggravated by the denial of his 1991 claim for a recurrence of disability,[12] by being fired from his job in 1992, by losing his service time, and by his protracted conflicts with the employing establishment over these issues. Dr. Sleber added that the employing establishment's handling of appellant's situation caused him significant emotional distress and mental anguish.

Neither Dr. Sleber nor Dr. Altaker identified any regular or specially assigned work duties as causative factors contributing to appellant's mental disorder. In fact, appellant's supervisor, Michael Hedstrom, reported that appellant worked for him from late 1992 until March 1994 during which time they had a "good working relationship," appellant would "show up in good spirits" and "seemed to enjoy" his work, and there was no problem in accommodating appellant's physical restrictions.

On reconsideration appellant argued that the employing establishment's refusal to provide him with light-duty work and its unreasonable actions in violating a 1992 settlement agreement caused and contributed to his emotional condition. Appellant stated that when he returned to light duty in September 1992 following the settlement agreement he was notified that because of his nonpay status during most of the previous year, he would have to begin a new six-year waiting period for layoff protection and would lose time from his service date.

Appellant grieved this notice. The employing establishment and the union agreed to dismiss the grievance at Step 3 after the settlement agreement was shown to the union, in contravention of a provision that its contents would not be used in any other forum. Appellant filed an appeal to the Merit Systems Protection Board (MSPB) which remanded the case for a Step 3 proceeding after the employing establishment admitted its error in relying on the agreement in the grievance proceeding. The MSPB found that sanctions were not appropriate as appellant had failed to demonstrate that the employing establishment "acted in bad faith or with malicious intent" in using the settlement agreement at Step 3.

While administrative and personnel matters are generally related to employment, they are functions of the employer and not duties of the employee. Thus, the Board has held that an employee's reactions to administrative actions are not compensable unless the record evidence

[12] Appellant missed approximately five months of work after his October 1990 injury. He returned to limited duty in March 1991 and claimed a recurrence of disability in December 1991. Appellant stopped work and was terminated in May 1992 but reinstated in September 1992 on limited duty. He again stopped work in March 1994 and was released to return to work without psychological restrictions in July 1994.

demonstrates error or abuse on the part of the employing establishment in its administrative capacity.[13]

Here, the employing establishment acknowledged relying on the settlement agreement in a grievance proceeding. But the record contains no evidence that the employing establishment acted abusively or unreasonably in processing appellant's grievance. And the MSPB agreed with the employing establishment that the proper corrective action for its mistaken use of the settlement agreement was to reinstate the grievance process at Step 3. Therefore, appellant has failed to establish that his emotional reaction to the employing establishment's personnel action constitutes a compensable factor.

Appellant also argued that the employing establishment's failure to provide limited-duty work in July 1994 aggravated his emotional condition. Appellant submitted an affidavit supporting his Equal Employment Opportunity (EEO) complaint in which he stated that he was informed verbally in June 1994 that the employing establishment could not provide limited-duty work within the restrictions imposed by Dr. Douglas K. Sanderson, a Board-certified orthopedic surgeon and his long-term treating physician. Appellant stated that these were the same limitations he had worked under previously, and the employing establishment had provided work to another employee under similar restrictions.

Appellant was instructed in a June 22, 1994 letter from the employing establishment to return to duty on his next regularly scheduled reporting day with proper documentation to substantiate his absence since March 14, 1994. The letter added that if appellant were unable to report for work, he must submit adequate documentation by July 7, 1994. A July 7, 1994 memorandum from a manager indicated that appellant's light-duty restrictions were "quite extensive" and added that "I would like to say that we have no work available." A March 22, 1995 letter from the employing establishment again instructed him to report for work with proper documentation explaining his continued absence or submit such documentation by April 1, 1995.

The employing establishment stated in a letter dated April 21, 1995 that it was unable to provide a light-duty job within Dr. Sanderson's restrictions, which included no more than 10 minutes of intermittent sitting, lifting and standing. The letter added that inasmuch as appellant's claim for a recurrence of disability had been finally denied on May 20, 1994, any job limitations would be considered light duty under the national union agreement rather than limited duty related to the claimed recurrence of disability.[14] The letter concluded that while appellant was eligible for light duty, his physical restrictions would prevent him from performing all assignments available and work could not be provided "without greatly hampering the prompt processing of the mail."

[13] *Sharon J. McIntosh, supra* note 5.

[14] The distinction between limited duty and light duty at the employing establishment is this: An employee who is partially disabled by a work injury may return to full-time limited duty, as permitted by his physician, and will be able to work eight hours or collect wage-loss compensation if eight hours of work within his physician's restrictions is not available. An employee who has sustained a nonwork injury may apply for light duty which will be provided at the discretion of the employing establishment. Thus, an employee on light duty is not necessarily entitled to full-time work and will not be eligible for any wage-loss compensation. The terms are used interchangeably at times.

On September 25, 1995 the employing establishment offered appellant a limited-duty position similar to the one he had had prior to March 1994. The record indicates that appellant did not respond to this offer. The employing establishment reiterated in a letter dated August 2, 1996 that its refusal of light-duty work was based on the severe physical restrictions placed on appellant by Dr. Sanderson.

Appellant has provided no evidence that the employing establishment had work available within the physical restrictions imposed by Dr. Sanderson but refused to provide it to him in July 1994. Rather, the record indicates that appellant's supervisor, Hank Weiman, denied that he informed appellant that no work was available. Further, appellant was not entitled to limited-duty work in July 1994 because his claim for a recurrence of disability had been denied.[15] Therefore, the restrictions imposed by Dr. Sanderson, while the same as those imposed three years earlier, only entitled appellant to light duty if available under the employing establishment's national agreement.

Finally, the employing establishment must retain the right to preserve an environment in which the performance of work is an essential goal.[16] Thus, provision of light-duty work within the physical restrictions of a specific employee is a management function only peripherally related to the employee's regular or specially assigned duties. As such, an employee's reaction to the lack of such work is not compensable under the Act, absent evidence of administrative error or abuse.

Here, the employing establishment informed appellant of his responsibility to submit medical documentation of his extended absence, and of its inability to offer him light-duty work within his physician's limitations that would not hamper the employing establishment's mission to process the mail. When such work became available, the employing establishment informed appellant. The record does not indicate that the employing establishment erred or acted unreasonably in failing to provide work for appellant in July 1994. Therefore, appellant's reaction to the employing establishment's actions is not compensable under the Act.[17] Inasmuch

[15] *See Glenn Robertson*, 48 ECAB ___ (Docket No. 95-639, issued February 20, 1997) (finding that appellant failed to submit rationalized medical evidence explaining how and why he was unable to perform his light-duty position).

[16] *Kathi A. Scarnato*, 43 ECAB 335, 339 (1991).

[17] *See William E. Seare*, 47 ECAB 663, 666 (1996) (finding that appellant's reaction to the labor specialist's administration of the prearbitration settlement was not a compensable work factor).

as appellant has established no compensable work factors, the Board need not consider the medical evidence.[18]

The March 17, 1997 and September 12, 1996 decisions of the Office of Workers' Compensation Programs are affirmed.

Dated, Washington, D.C.
June 9, 1999

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

[18] *See Dinna M. Ramirez*, 48 ECAB ___ (Docket No. 94-2062, issued January 17, 1997) (finding that the Board need not consider psychiatric evidence because appellant failed to establish that the employing establishment acted abusively in denying her request for official time).